IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.322 OF 2005

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Radhakirshnan Aiyer ...Petitioner

v/s.

Kanhaia Ramaiya Komu

and Ors. ...Respondents

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Mr.D.D. Madon i/b J.S.Kini for the Petitioner.

Mr.S.C.Gupte i/b V. Mannadiar for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 6TH DECEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the

award made by the sole arbitrator. The Petitioner and the Respondents had entered into partnership. The business of the partnership firm was to develope the property viz C.T.S. No.644 and 644(1 to 15) situate at Village-Kanjur, Bhandup (West), Mumbai. The disputes between the parties were mainly in relation to accounts of the firm. It appears that initially the Respondents did not furnish the account. Therefore, interim direction was required to be issued by the learned arbitrator. Ultimately, accounts were filed. The arbitrator after going through the accounts and hearing the matter has made the award apportioning the amounts that were due amongst the parties.

2. The Petitioner challenges the award mainly on the ground that the Petitioner had challenged the correctness of the accounts of the firm, which were submitted by the Respondents. The learned arbitrator has also noted in the award that the Petitioner has challenged the correctness of the accounts submitted by the Respondents. But the learned arbitrator has not decided the said objection. The learned counsel submits that the learned arbitrator has in the award noted that before examining the correctness of the

accounts, the issue regarding the Bank accounts filed by the Respondents along with the Accounts for the Second period will have to be examined. The learned arbitrator examined that issue, but has not decided the same. The learned Counsel further submits that in the award the learned arbitrator has observed that as per the agreement entered into between the firm and the purchaser the total sale consideration receivable by the firm was Rs. 1,39,21,000/-, whereas according to the learned arbitrator the firm has received the sale proceeds in the amount of Rs.3,04,45,175/-. It was the case of the Petitioner that cash received by the Respondents from the purchaser was not accounted and that contention also has not been decided by the learned arbitrator.

3. The learned Counsel appearing for the Respondents, on the other hand, submits that all the objections that were raised by the Petitioner to the correctness of the accounts have been decided by the learned arbitrator in the award. The learned Counsel submits that though it was claimed that all the cash that was received by the firm was received on 13-3-2003, which was duly accounted for, the Petitioner has not led any evidence to show that the

cash that has been received by the Respondents subsequent to 13-3-2002 are not being accounted for. According to the learned Counsel appearing for the Respondents, all contentions raised by the Petitioner have been duly considered by the learned arbitrator. Findings recorded by the learned arbitrator are essentially findings of fact and therefore they cannot be disturbed.

4. Perusal of the award shows that it is a detailed award made by the learned arbitrator. In paragraph 7 of the award, the learned arbitrator has observed that the Petitioner has raised an objection on both Income side as well as the Expenditure side. But the learned arbitrator has further observed that so far as income side is concerned, the objection of the Petitioner that the income of the firm was understated by reducing the areas of various units sold to the Purchasers and that there are differences in areas as per the Letters of Allotment issued, Sanctioned Plans and Areas stated in the Agreement executed with the Purchaser. So far as Expenditure side is concerned, according to paragraph 9 of the award, the objection of the Petitioner was that he was disputing the payments towards land cost and

certain other heads of expenses. Perusal of the award shows that the learned arbitrator has dealt with the objection raised to the account to both income side and expenditure side. Perusal of the observations of the arbitrator in paragraph 3 of the award shows that the arbitrator has dealt with the objection raised as to the income side. Perusal of the award further shows that the learned arbitrator has also dealt with the objection raised by the Petitioner to the account on expenditure side. The learned Arbitrator has observed that the claimant has never disputed the construction costs of the building as submitted in the account dated 12-3-2003. So far as the submission that the cash was received after 13-3-2003 by the Respondents which has not been accounted by them is concerned, admittedly, the Petitioner has not led any evidence to substantiate this allegation. In my opinion, therefore, non-consideration of those allegations, in view of the admitted position that the Petitioner has not led any evidence, will not vitiate the award. I find that the award impugned in the petition is well considered award. Findings recorded by the learned arbitrator are essentially finding of fact. It cannot be said that any contention that was raised

before the learned arbitrator has been ignored and/or omitted by the learned arbitrator from his consideration. In my opinion, therefore, in the extremely limited jurisdiction of this court under Section 34 of the Arbitration Act to interfere with the award made by the arbitrator, the award cannot be interfered with. Petition, therefore, fails and is dismissed. The Petitioner is directed to pay costs of this petition to the Respondents, as incurred by the Respondents.

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